

**MINUTES OF THE
AUBURN CITY PLANNING COMMISSION
NOVEMBER 1, 2005**

The regular session of the Auburn City Planning Commission was called to order on November 1, 2005 at 6:30 p.m. by Vice Chairman Powers in the Council Chambers, 1225 Lincoln Way, Auburn, California.

COMMISSIONERS PRESENT: Merz, Murphy, Powers, Thompson,

COMMISSIONERS ABSENT: S. White

STAFF PRESENT: Will Wong, Community Development Director; Reg Murray, Senior Planner; Steve Geiger, Associate Planner; Janet Ferro, Administrative Assistant

ITEM I: CALL TO ORDER

ITEM II: PLEDGE OF ALLEGIANCE

ITEM III: ELECTION OF PLANNING COMMISSION OFFICERS

A. Chairperson

Comm. Thompson nominated Comm. Powers. There were no other nominations and Comm. Powers was elected unanimously.

B. Vice Chairperson

Chrm. Powers nominated Comm. Thompson. There were no other nominations and Comm. Thompson was elected unanimously.

C. Traffic Committee Representative

Comm. Merz volunteered to serve another term on the Traffic Committee.

D. Traffic Committee Alternative

Chrm. Powers nominated Comm. S. White. There were no other nominations and Comm. White was elected unanimously.

ITEM IV. APPROVAL OF MINUTES

The minutes of October 4, 2005 were approved as submitted.

ITEM V: PUBLIC COMMENT

None.

ITEM VI: PUBLIC HEARING ITEMS

- A. **Use Permit – 500 Auburn Folsom Road (Michael Murphy) – File UP 05-4.** The applicant requests approval of a Use Permit to allow a residential apartment unit within an existing professional office building.

Comm. Murphy announced that he would abstain from participating on this proposal as he is the project architect. Comm. Murphy left the Council Chambers.

Steve Geiger gave the staff report. He advised that in February of 2003 the Planning Commission approved the applicant's request for a Civic Design to construct a two-story office building at 500 Auburn Folsom Road and a Variance to allow encroachment into the required front setback. The building has subsequently been constructed and improvements have been made for tenants. The applicant is now proposing to construct a residential studio apartment within the existing office building. The Office Building (OB) zoning allows for living quarters in connection with an established office use with approval of a use permit. The applicant has indicated that the presence of someone living on the property will provide added security to the office use.

The public hearing was opened.

Janice Forbes, representing Forbes Family Trust, gave additional information on the proposal. She noted that they have a few items, such as landscaping, that need to be completed before they can receive a final for the office building. She asked that Condition 5 be amended to allow issuance of a building permit so that construction on the residence can begin before the office building has received a final Certificate of Occupancy.

The public hearing was closed.

The Commissioners discussed the proposal.

Comm. Thompson **MOVED** to:

- A. Find the request Categorically Exempt from the California Environmental Quality Act per Section 15301 of the CEQA Guidelines, and
- B. Approve the Use Permit to allow a residential apartment within an existing professional office building located at 500 Auburn Folsom Road, subject to the findings and the conditions listed, with Condition 5 modified to read:

“Prior to issuance of a ~~building permit~~ **Certificate of Occupancy** for the proposed residential apartment, all outstanding items required for final occupancy of the office building shall be completed.”

Comm. Merz **SECONDED**.

AYES: Merz, Thompson, Chrm. Powers
NOES: None
ABSTAIN: Murphy
ABSENT: S. White

The motion was approved. Comm. Murphy returned to his seat with the Commission.

- B. **Variance – 123 Recreation Drive (ARD Tower Extension) – File VA 05-6.** The applicant requests approval of a Variance to allow an eight foot (8’) height extension of an existing ball field light tower to accommodate the addition of several cellular antennas.

Comm. Murphy stated that he will abstain from hearing this item as his office is located adjacent to the subject property. Comm. Murphy left the Council Chambers.

Reg Murray gave the staff report. He reviewed the proposal and gave the history of this project. In October, 2003, the City issued a

building permit for the replacement of a light tower at James Field, an Auburn Recreation District baseball/softball facility on Recreation Drive. The permit for the tower was approved administratively and following construction, staff became aware that the new tower was constructed higher than originally permitted. As a result, the building permit was not finalized and the developer was notified that corrective action was necessary. Ubiquitel, operator of the cellular facility, has responded with the current variance application.

The public hearing was opened.

Nicole Thomas of Ubiquitel was present to answer questions and asked that the requested variance be granted by the Commission.

The public hearing was closed.

After a short discussion, Comm. Merz **MOVED** to:

- A. Adopt the following findings of fact for the Variance for ARD Tower Extension:
 - 1. That the granting of the variance is not inconsistent with the limitations upon other properties in the vicinity and the zone district in which the subject property is situated;
 - 2. That because of special circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, the strict application of the provisions of this chapter is found to deprive the subject property of privileges enjoyed by other properties in the vicinity in the same zone district; and to
- B. Approve the Variance for the ARD Tower Extension subject to the conditions listed.

Comm. Thompson **SECONDED**.

AYES: Merz, Thompson, Chrm. Powers
NOES: None
ABSTAIN: Murphy
ABSENT: S. White

The motion was approved. Comm. Murphy returned to his seat with the Commission.

- C. **Use Permit – 385 Placer Street (Thompson Garage Expansion) – File UP 05-7.** The applicant requests approval of a Use Permit to allow for the expansion of an existing legal non-conforming garage.

Director Wong gave the staff report. He advised that the existing use is a single-family residence located within a Regional Commercial District zone. The applicant desires to demolish the existing garage/carport and construct a larger garage on the property. Public hearing notices were mailed to property owners within 300 feet of the subject lot and to date no objections have been received. The Community Development Department supports the request.

The public hearing was opened.

Ray Thompson, applicant, gave additional information.

The public hearing was closed.

The Commissioners reviewed the applicant's proposal.

Comm. Murphy **MOVED** to:

- A. Find the request Categorically Exempt from the California Environmental Quality Act per Sections 15302 and 15303 of the CEQA Guidelines, and
- B. Approve the Use Permit to allow for the expansion of an existing legal non-conforming garage at 385 Placer Street subject to the findings and the conditions listed in Exhibit "A" of the staff report with a minor correction to the expiration date listed in Condition #2 (change to November 1, 2007.)

Comm. Thompson **SECONDED**.

AYES: Merz, Murphy, Thompson, Chrm. Powers
NOES: None
ABSTAIN: None
ABSENT: S. White

The motion was approved.

D. Ordinance Amendment – Medical Marijuana – File OA

05-2. The Planning Commission will consider an Ordinance Amendment (File OA 05-2) amending the Auburn Municipal Code regarding medical marijuana dispensaries. The proposed ordinance amendment would repeal Ordinance No. 04-3, regarding medical marijuana dispensaries, thereby deleting the language added to the Auburn Municipal Code; and adding Section 159.019 Prohibited Uses, which would prohibit medical marijuana dispensaries or any other facility or use which involves the distribution of drugs or other substances which it is illegal to distribute or possess under state or federal law.

Director Wong described this request to amend the Auburn Municipal Code. He advised the Commissioners that the motion would be to recommend to the City Council that they amend the code as requested.

Kevin Hanley, Auburn resident and City Council member, explained the reasons for this ordinance amendment request. He advised that the intent of the amendment to repeal this ordinance was to remove from the Auburn Municipal Code an ordinance allowing operation of a business dispensing a drug that under federal law is illegal to possess, sell or cultivate. He added that it would be a waste of time for everyone involved if a business were allowed to operate in the City and was then raided and closed by the federal government.

Joe Magna, local attorney, stated that many doctors support the operation of medical marijuana dispensaries and he felt that allowing them to operate would reduce criminal activity.

Bryan Davies, Antelope resident, advised that he works in a medical marijuana dispensary in Sacramento. He referred to the many patients from all walks of life who visit the dispensary with a physician's prescription, as it has been determined that the drug is a benefit in the treatment of cancer, chronic pain, and many other diseases and ailments for which marijuana provides relief.

Lynette Davies, Antelope resident, stated that the dispensaries already in operation in Sacramento have proven to be a safe, affordable way for patients to obtain this drug. Without the

dispensaries there is no legal way for a patient to obtain the drug that has been prescribed by their physician.

Ray Thompson, local resident, agreed with the previous speakers and asked the Commission to recommend denial of this ordinance amendment to the City Council.

Joe Labrie, Auburn City clerk speaking as a private citizen, presented information he had obtained that outlined the basic laws relating to medical marijuana and municipal authority, information compiled to help educate cities on this issue. He read from a letter from "The Compassionate Coalition", which stated, in part:

"The current conflicts between California's medical marijuana laws and federal drug laws have caused some confusion about which laws govern municipalities. However, the California Constitution makes it clear that city and county governments are legally required to follow state law when it may conflict with federal laws". He then cited Article 3, State of California constitution, Sec.3.5., which states that an administrative agency has no power to: "...declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional".

Labrie then added that no city or county has the legal authority to ban or unreasonably restrict caregivers, collectives or cooperatives acting in accordance with California Health & Safety Code 11362.5 and 11362.7, and any attempt to do so will directly violate California law and will be subject to legal action. He pointed out that California residents voted overwhelmingly in favor of making medical marijuana available by passing Proposition 215, the Compassionate Use Initiative, that created a right for patients to obtain and use medical marijuana with the recommendation of a physician.

Jon Mason and Pat McCartney, local residents, also spoke to ask that Auburn follow the will of the people and recommend against this ordinance change.

Councilperson Kevin Hanley then returned to the lectern. He stated that after hearing all the speakers who were against this ordinance amendment and all the material presented, he would like

to read and further review the information. He asked that the Planning Commission postpone this item indefinitely.

The public hearing was closed.

Comm. Merz **MOVED** to continue this item off calendar.

Comm. Murphy **SECONDED**.

The motion to continue off calendar was approved unanimously by voice vote.

**ITEM VII: COMMUNITY DEVELOPMENT DEPARTMENT
FOLLOW-UP REPORTS**

A. City Council Meetings

Director Wong reported on recent City Council meetings.

B. Future Planning Commission Meetings

None.

C. Reports

None.

ITEM VIII: PLANNING COMMISSION REPORTS

Comm. Merz reported on the Traffic Committee meeting.

ITEM IX: FUTURE PLANNING COMMISSION AGENDA ITEMS

None.

ITEM X: ADJOURNMENT

The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

Janet Elaine Ferro, Administrative Assistant